Filed 8/10/09 In re K.M. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re K.M. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. S.D., Defendant and Appellant.	C058561 (Super. Ct. Nos. JD224184, JD224185, JD224186)

In this dependency case, the juvenile court sustained jurisdiction over three minors, removed them from their mother's custody, and ordered reunification services for the mother, who timely appealed. On appeal, the mother challenges the evidentiary basis for two components of those services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We omit the facts and procedures pertaining to the fathers, and focus on those matters pertinent to the issues on appeal.

Three substantively identical petitions were filed on August 13, 2007, alleging that the mother's three children, K.M. (aged 11), N.M. (aged 9) and K.D. (aged 5) were subject to juvenile court jurisdiction because the mother had mental problems making her unable to provide for them, and placing them at risk. At a detention hearing, services were ordered for the mother, including drug testing.

The petitions were amended twice. The first amended petitions, filed October 1, 2007, alleged that on September 18, 2007, the mother "and her boyfriend, David [T.]" had been arrested for battering each other in the presence of K.D., the youngest child. The second amended petitions, filed January 3, 2008, dropped the battery ground, but added two others. The first new ground was that on September 15, 2007, the mother committed acts of domestic violence "with her boyfriend, David [T.]," and N.M., the middle child, witnessed these events. The second new ground was that the mother was a prostitute, David T. was her pimp, and the middle child "is aware of the mother's conduct in that the child said that her mother 'goes out ho-ing and trickin' to take care of us.'"

At the jurisdictional hearing held on March 3, 2008, the juvenile court stated on the record that it had reviewed written reports and addenda prepared by the social worker. The fourth addendum incorporated a police report, and stated that report was relevant because it reflected the mother's admissions to a peace officer, relevant to the mother's "mental health issues."

The mother did not object to the juvenile court's consideration of the contents of this police report.

The police report pertained to the September 15, 2007, incident alleged in the second amended petitions. On that day, the mother spoke with Officer D. Patterson, of the Sacramento Police Department. In part she described the events with her "boyfriend" that day. Later that day, after the mother had been taken to jail, she waived her rights and told the officer that David T. "is not so much my boyfriend as he is my pimp." He controls her finances and makes his living "through pimping girls and selling drugs. During the days when I am away at my other job, [T.] is the one who takes care of my children." The mother also told the officer: "I have bi-polar disorder and I cannot afford to take my medicine, so life is already hard enough without David putting me through hell. I have had enough, and I am through with David, so I will give you information regarding David's business." David T. and his friends "cook" rock cocaine at his aunt's apartment, and "have numerous girls that they pimp out. . . . While David is running girls around town from 'trick to trick', he also is selling rock cocaine. He has been using my car to drive his hookers and his drugs around town. I am David's main girl because I am the oldest and because he lives at my house. . . . During the day I work at a 'square' job and David takes care of my children. [¶] I do not know why my daughter said I am 'tricking and hoeing' because she does not know what I do. I keep my lifestyle away from my children. . . . [¶] When I am 'turning tricks' I

hardly ever collect the money. David controls all of my money." She stays with David T. because she is "very depressed."

At the jurisdictional hearing, the mother testified she did not remember these statements, and her words must have been misconstrued. She admitted suspecting that David T. sold drugs. She admitted having an anger problem, but denied any mental health problems. She denied David T. was her boyfriend or her pimp and denied telling a social worker that he was, or that he sold drugs.

The social worker's reports show the mother was on felony probation for using tear gas on a prior boyfriend, and a condition of probation was that she had to submit to random drug testing. To date, her drug testing was negative. The mother was also on probation for a 2006 drunk driving charge. (Veh. Code, § 23152, subd. (b).)

Of the three grounds in the final petitions, the mother's counsel at argument strongly contested the mental health ground, effectively conceded the domestic violence ground, and, as for the prostitution ground, conceded that the officer accurately recorded the mother's statements, but argued the mother may have made those statements on impulse.

The juvenile court dismissed the mental health ground, but sustained the domestic violence and prostitution grounds.

The dispositional hearing began the next day, March 4, 2008, and was completed on March 5, 2008.

At the dispositional hearing, the mother in part testified that she had two years left on her probation, and agreed that her drug testing to date had been negative.

The juvenile court adopted the "case plan," which in part included a mental health medication assessment and drug testing.

The mother timely filed this appeal.

DISCUSSION

The mother challenges the drug testing and mental health medication evaluation components of the reunification services ordered by the juvenile court. We reject her challenges.

The goal of reunification services is to try to ameliorate the conditions which led to the removal of the children. (See *In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438-439; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776-1777.) "Reunification services are typically understood as a benefit provided to parents, because services enable them to demonstrate parental fitness and so regain custody of their dependent children." (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228 (*Nolan W.*); see *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474-475.)

"At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor's parents to facilitate reunification of the family. [Citations.] The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion." (*In re*

Christopher H. (1996) 50 Cal.App.4th 1001, 1006.) "[T]he juvenile court's discretion in fashioning reunification orders is not unfettered. Its orders must be 'reasonable' and 'designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.' [Citation.] 'The reunification plan "'must be appropriate for each family and be based on the unique facts relating to that family.'" [Citation.]' [Citation.]" (*Nolan W.*, *supra*, 45 Cal.4th at p. 1229.)

In this case the mother does not contend that *insufficient* services were provided (cf., e.g., *In re Misako R.* (1991) 2 Cal.App.4th 538, 547), she contends that *unnecessary* services were ordered. We address the mother's two claims separately.

I

Drug Testing Order

The mother contends the drug testing order is infirm because there is no evidence she uses drugs and because her drug testing to date has been negative.

The mother relies on cases where there was no substantiated evidence of a drug problem by the parent. (*In re Sergio C.* (1999) 70 Cal.App.4th 957, 959-960 [only evidence that father used drugs was an "unsworn and unconfirmed allegation" by the mother, a drug abuser who had abandoned the children]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172-173 [no evidence parents had a substance abuse problem, improper to include substance abuse component among the reunification services].)

At the dispositional hearing, the mother's counsel did not object to the drug testing component of the reunification services. At the end of the hearing the mother's counsel explained "she's been engaged in steady urinalysis for quite a long time. She's indicating no positives. She -- I'm not certain exactly what her concern is, but I believe she would just like it reduced maybe to a random." After the social worker confirmed that the mother's tests had been negative, the juvenile court stated: "It's random arranged by the Department, so the Department needs to evaluate how much the parents have done in terms of amount of random testing that they're being asked to submit to."

Accordingly, because the mother did not object to drug testing as such, we conclude the mother has not preserved her appellate challenge. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502; see *In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Moreover, the challenge lacks merit. Substance abuse interferes with appropriate parenting, and reunification services commonly address substance abuse when there is evidence showing a parent has or may have a drug problem. (E.g., *In re William B.* (2008) 163 Cal.App.4th 1220, 1227-1229 [but reversing decision to provide services, because there was no evidence the children would ever reunify with the parent]; see also *In re Neil D.* (2007) 155 Cal.App.4th 219, 225-226.)

We disregard apparently uncorroborated statements by others about the mother's drug use.

The evidence included the mother's admissions to Officer Patterson in which she admitting working as a prostitute, admitted that her pimp, David T., lived with her and watched her children while she was at her "'square' job" and admitted that he cooked and sold cocaine.

We do not assume all prostitutes are drug users, but the juvenile court did not exceed the bounds of reason by concluding that the mother in *this* case, who associated so closely with a drug cooker and dealer, by allowing him to live with her and watch her children, should herself be monitored for drug usage.

Moreover, the mother was subject to random drug testing for two more years by virtue of the probation order entered in her criminal case. The juvenile court could rationally conclude that the social worker would consider those tests in determining when to have the mother submit to a random test, to avoid unnecessarily duplicative testing. That appears to be what the juvenile court meant by stating "the Department needs to evaluate how much the parents have done in terms of amount of random testing that they're being asked to submit to."

The mother suggests that her order is unfair when compared to a drug testing order for one of the fathers, which would expire on April 16, 2008, if his tests were all negative. But the portions of the record she cites do not show that he had a drug problem. She cites passages where her trial counsel stated that this father was using drugs and not testing regularly, and part of a social worker's report stating he had not been "actively involved" in meeting his case plan and "self-reported"

his drug testing. The statements by counsel were not evidence. (*In re Zeth S.* (2003) 31 Cal.4th 396, 413-414, fn. 11.) Because the social worker's report does not show he had a drug problem, the argument of unfairness by comparison fails.

II

Mental Health Medication Evaluation

The mother contends that because the juvenile court dismissed the allegation that she had a mental problem impairing her parenting ability, the court should not have ordered that she undergo a mental health medication evaluation.

It is not clear whether the appellate challenge to this order has been preserved. At one point the mother's counsel *suggested* this evaluation. However, after the mental health allegation was dismissed, counsel did appear to question the need for it. When the juvenile court ordered the evaluation, the mother addressed the court personally and said such an evaluation had already been done. The juvenile court said that if this was so, she would not have to repeat it, stating, "I'm going to order the assessment. If you have already done it, then you're done." Counsel did not lodge any objection when the juvenile court and the mother had this discussion on the record. Therefore, at least arguably, the record shows the mother acquiesced in the order.

But assuming the issue has been preserved for appeal, the order was not for the mother to take mental health medication, but merely to be evaluated. The mother admitted to having an anger problem. Although the mother denied having any mental

health problems, the juvenile court did not have to believe her. The court could accept as true her admissions that she was "very depressed" and has "bi-polar disorder" and "cannot afford to take my medicine."

Given such evidence, the juvenile court could rationally conclude a mental health medication evaluation was appropriate.

DISPOSITION

The orders of the juvenile court are affirmed.

NICHOLSON, J.

We concur:

SIMS, Acting P. J.

CANTIL-SAKAUYE, J.